

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2494 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

Versus

Appearance:

MR PJ VYAS for Petitioners
MR BY MANKAD, for Respondent No. 1, 2 & 4
NOTICE SERVED for Respondent No. 7
MR UDAYAN P VYAS for Respondent No. 5
MR SV RAJU for Respondent No. 6

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/01/99

ORAL JUDGEMENT

By means of this petition, the petitioners have prayed for quashing the order dated 7-2-1986 Annexure-E passed by the Government.

2. Gram Panchayat respondent no. 7 passed the Resolution seeking permission to sale five plots for the residential purpose by public auction. The Taluka Development Officer (TDO) granted the permission on 6-9-1983 to sell five plots by public auction. On 27-10-1983 public auction took place and the petitioners and the respondent no. 6 were the highest bidders in the auction sale and they deposited 1/4 amount of the sale price on the same day. On 27-2-1984 public auction was confirmed and the payment of remaining 3/4 of the auction sale price was also paid by the petitioners. On 26-3-84 "Kabuliyat" was executed between the parties. On 7-1-1985 the respondent no. 5 filed an appeal before the Dy. Collector against the public auction sale which was made in favour of the petitioners. The application for an interim order staying the proceedings of public sale was also moved. But that application was rejected by the Dy. Collector. Against that order, the respondent no. 5 preferred an appeal before the Collector during the pendency of the said appeal before the Dy Collector. The Collector decided the appeal directing the parties to maintain status-quo and the Dy. Collector was directed to decide the appeal. On 26-2-1985 the appeal filed by the respondent no. 5 before the Dy. Collector was allowed and a fresh notification was ordered to be issued for wide publicity. The Collector by the order dated 12-4-1985 dismissed the appeal and confirmed the order of the Dy. Collector. It was further directed by the Collector that 20% of the land was to be reserved for SC and ST. The petitioners being aggrieved with the aforesaid order preferred a Revision Application before the Government. The Government by the order dated 7-2-1986 dismissed the revision application of the

petitioners and confirmed the order of the Collector.

3. The learned counsel for the petitioner submitted that the respondent no. 5 has no locus standi to agitate the matter for cancellation of public auction sale which has already been confirmed u/s 172 of the Bombay Land Revenue Code, 1979 as the sale by public auction has become absolute. The authorities below have committed an error on the face of the record in setting aside the public auction sale which has already been confirmed.

4. Heard learned counsel for the respondent no. 5 Mr. U.P. Vyas, Mr. S.V. Raju for respondent no. 6 and learned State Counsel Mr. B.Y. Mankad.

5. I have gone through the papers carefully. The Dy. Collector, Palanpur after considering the material on record and the submissions made on behalf of the parties came to a conclusion that there was no higher bid than the exact upset price fixed. In public auction except six persons no other persons had participated and the proceedings of the public auction sale appeared to be conducted not freely and wide publication was not made by the notification. Only four persons of the same community had participated which was not accepted on the ground that more price was not recovered than the upset price. As the amount realised was less it was suspicious. Vide publication of the notification in the village did not appear from the record produced in this case as there was no report as to wide publication of the notification in the village. It was also mentioned that the Officer confirming the public auction was the relative of the respondents no. 2 and 3. Regarding relationship the respondent no. 6 has stated that it appears that due to some mistake it has been mentioned that the Officer confirming the public auction was relative of the respondents no. 2 and 3 as there is nothing in the narration of the case in paragraph no. 2. The Collector found that the up set price was fixed at Rs. 3/-. Whereas in the Rojkam bid of each plot was made at Rs.1-80 ps. and when the up set price was fixed at Rs. 3/-, bid cannot be started at less price than the price fixed. The bid for five plots had began at Rs. 1-80 ps. and the bid was accepted at Rs. 3/-. More price is not realised than the up set price of Rs. 3/in any case. There was no bid of any other persons. The persons at Sr. no. 1 and 3 had managed to get two plots contiguously. These three persons and the Panchayat has done with understanding. The auction was not in the form of auction. The auction had to begin with the up set price but it started with less price which was contrary

to law. No provision was made for reservation of the plots for SC and ST. The proceedings were held for the benefit of three persons only. No verification was made as to how many persons bade at the auction. There was a demand of Rs.8/-. Hence, the auction was held inter-se with understanding and the auction did not seem to be bonafide and it was suspicious. The collector, while setting aside the order of the Taluka Development Officer land confirming the order of the Dy. Collector directed to reserve 20% of the land for SC and ST and to hold public auction for sale of five plots freely. In the Revision Application filed by the petitioners before the Government, the Government confirmed the order of the Collector and the Dy. Collector and dismiss the same.

6. I have carefully examined the submissions made on behalf of the parties and perused the relevant record and I am in agreement with the order of the Dy. Collector, Palanpur wherein the proceedings of the auction of sale of the plots appeared to be suspicious as only three persons participated in the auction sale and those three persons obtained the plots in auction sale. The bid was required to be started from Rs. 3/-. But it started from Rs.1-80. From the circumstances, it appears that there was some collusion between the petitioners and the Taluka Development Officer. It has been mentioned by the Dy. Collector that the Confirming Officer is relative of the respondent no. 2 and 3. It has also been mentioned by the Dy. Collector that it cannot be doubted that this ground was mentioned only due to some mistake. Even if it is assumed that the appeal was not maintainable and the respondent no. 5 has no locus standi but the Government has power to examine the facts and circumstances suo motu and the Government has examined legality of the proceedings and found that auction proceedings suffer from material irregularities and which were not conducted in the manner provided by the law. 20% of the land was required to be reserved for SC and ST and that has not been done by the Taluka Development Officer.

7. In the facts and circumstances of the case, I do not find any illegality calling for interference by this Court under Article 226 of the Constitution of India. Accordingly, this petition is dismissed. Rule is discharged. with no order as to costs. Interim relief, if any, stands vacated.

-0-0-0-0-0-

/JVSatwara/

